

# **Exhibit J**

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16N4TERC

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 IN RE: TERRORIST ATTACKS

3 ON SEPTEMBER 11, 2001

03MDL1570(GBD)(FM)

4 -----x

5 June 23, 2011

6 11:35 a.m.

7 Before:

8 HON. FRANK MAAS

9 Magistrate Judge

10 APPEARANCES

11 ANDERSON KILL & OLICK

11 Attorneys for O'Neill Plaintiffs and PECs

12 JERRY S. GOLDMAN

13 COZEN O'CONNOR

13 Attorneys for Federal Insurance Plaintiffs and PECs

14 SEAN P. CARTER

14 J. SCOTT TARBUTTON

15 MOTLEY RICE

16 Attorneys for Burnett Plaintiffs and PECs

16 ROBERT T. HAEFELE

17 CLIFFORD CHANCE

18 Attorneys for Defendant Dubai Islamic Bank

18 BY: RONI BERGOFFEN (via telephone)

19 McMAHON & ASSOCIATES

20 Attorneys for Defendants IIRO, MWL and Wa'el Jelaidan

20 BY: MARTIN McMAHON (via telephone)

21 STEVEN BARENTZEN (via telephone)

22 Attorney for Defendant Jamal Barzinji

23  
24  
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1 THE COURT: Let me just interrupt. I understand part  
2 of the difficulty is that you have not been to the kingdom. I  
3 am not suggesting that you need to invest your own money in the  
4 case. Quite the opposite; I think that privately retained  
5 attorneys are entitled to be paid, and I have never kept in a  
6 case an attorney who was not getting paid who wished to exit a  
7 case.

8 But whether it's because of Saudi regulations or  
9 whatever, documents were not produced on a schedule which is  
10 consistent with my order which was that these 8 narrow  
11 categories were to be produced within 30 days, I think 30 days  
12 of April 12. I am pretty sure it was as of April 12. Even it  
13 was April 26, we are still more than a month beyond the  
14 deadline for the 8 narrow categories.

15 So it seems to me, and you are telling me that after  
16 the conference rather than shortly before the conference, you  
17 are going to be getting back to Mr. Carter, which basically  
18 means there is no way to know what the outcome of that would be  
19 today. So I guess I somewhat share plaintiffs' frustration.  
20 One thing that your clients ought to be concerned about is that  
21 I can't worry about issues like Saudi approvals for attorney  
22 fees.

23 What inevitably may happen in this case is that if  
24 responsive documents are not produced, and Mr. Carter and his  
25 colleagues are able to show that the documents exist and should

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1 be produced, some of the tenor of what they said in the prior  
2 conferences suggests to me that they may have specimens of  
3 documents from whatever sources that enable them to show that  
4 there are categories of reports that exist, which at least as  
5 of now have not been produced. If they make a sufficiently  
6 persuasive showing, your clients may be faced with the prospect  
7 that I issue case-dispositive sanctions.

8 So, I will let you finish talking but I just wanted  
9 you to understand my concerns and where we collectively may all  
10 be headed. Go on.

11 MR. McMAHON: I appreciate that, your Honor. You have  
12 always being struck me as being a very level-headed guy and you  
13 are trying to satisfy the plaintiffs' needs and you are  
14 cognizant of the fact that we are dealing with a foreign  
15 country. What my point is that we have produced everything  
16 that was called for in terms of the 8 categories for both MWL  
17 and IIRO-SA and we now have that format. I am going to send  
18 that to Mr. Carter in about an hour or so. I am waiting on our  
19 translator to tell me some other things, but we can certainly  
20 get that to him.

21 That is our position that we have complied. I  
22 apologize. It was not timely in terms of if you set this down  
23 for 30 days. Mr. al Rahdi is just super overworked. He can't  
24 get the resources he needs to do all sorts of stuff. He's been  
25 killing himself. He has produced a ton of things. I have sent

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1 court issued a subsequent order on April 27, directing the IIRO  
2 to produce documents relating to other unrelated issues,  
3 distinct from the 8 categories. Those included records  
4 relating to Mohammed Jamal Khalifa, another individual named  
5 Wa'el Jelaidan, and the director named al Mujil.

6 Since the April 27 order was issued there has been  
7 absolutely no production relative to any of those issues. So  
8 there has been a focus on a few discrete aspects of the 8  
9 categories. We don't think that that is complete. There has  
10 been nothing as to the other order.

11 Adding to the problems, Mr. McMahon suggested there  
12 was a conciliatory tone. What there wasn't was any outreach to  
13 us in advance of any of the expirations of these deadlines at  
14 all to let us know that there was going to be a problem, to let  
15 us know that they were not going to be able to comply with the  
16 court's order. It's all after the fact and only after we  
17 invest the time and effort to come before the court again on an  
18 issue that really should have been put to bed.

19 THE COURT: What I am inclined to do is to put this  
20 over to the July 12 or 13 conference. I think I have made my  
21 position clear which is that if a persuasive showing can be  
22 made that MWL and IIRO have not fully complied with the rulings  
23 that I made on April 12 and April 26, those organizations may  
24 be facing a more formal motion that I would entertain which if  
25 my recommendation were to be accepted by Judge Daniels might

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1 lead to the entry of default judgments against those  
2 organizations. By the same token, if you are not getting paid  
3 and move to withdraw on another route, they could end up in the  
4 same position.

5 So I am inclined to put this off because there is not  
6 much point in my simply saying you really have to comply with  
7 orders that I last time and the time before said you really  
8 have to comply with. But really the burden is it seems to me  
9 on your clients, Mr. McMahon, to establish that they have  
10 complied, putting aside questions of timeliness of the  
11 compliance.

12 I don't think I said it before, but as far as I am  
13 concerned anything that is produced by anybody needs to be  
14 Bates-stamped because it's difficult enough that we are dealing  
15 with documents in Arabic and there may be translations down the  
16 road, if we have piles of documents that are not Bates-stamped,  
17 this is rapidly going to spin even more out of control than it  
18 may be now.

19 MR. CARTER: Your Honor, we have a double problem with  
20 regard to Bates-stamping as far as the IIRO is concerned.  
21 There were documents produced without Bates stamps. Then there  
22 was another production which repeated Bates stamps that were  
23 used in an earlier production with regard to different  
24 documents. So for instance, I directed Mr. Haefele to a  
25 particular Bates stamp the other day and he was looking at a

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1 period after 1992.

2 MR. McMAHON: How can it be? He was in jail; he was  
3 under arrest.

4 MR. CARTER: He was briefly detained in the United  
5 States; he was not in jail throughout that period of time.

6 THE COURT: One thing that Mr. McMahon had suggested  
7 was that the person you are relying on to review the documents,  
8 or I guess the indices, have a discussion with the person who  
9 the defendants are using for the same purpose and I guess I  
10 don't see much harm in that. Why should that not occur?

11 MR. CARTER: There's a whole group of people who need  
12 to be used to analyze this information. The analysis of  
13 information in this case requires a rather unique set of  
14 skills. It's not really translating; it's having substantive  
15 knowledge regarding particular activities, particular  
16 individuals, networks.

17 THE COURT: I am really focusing, maybe I didn't make  
18 it clear, on the indices, the two indices, and how they were  
19 generated, what you perceive as the shortcomings, why they  
20 perceive them as adequate, and perhaps dealing with some of the  
21 issues where you say just the file organization suggests that  
22 there must be must be other indices. I guess what I am  
23 proposing is that whoever is generating that belief on your  
24 side communicate with whoever thinks they have done an adequate  
25 job on their side as part of an informal meet and confer to see

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